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## BLAKEMORE'S ADM'R et al. v. ROLLER et al.

March 10, 1910.

[67 S. E. 377.]

**1. Judicial Sales (§ 52\*)—Property Sold—Sale in Gross or by Acre.**—That the land sold for a lump sum was spoken of as the "ten-acre tract" does not show that the sale was by the acre, rather than in gross.

[Ed. Note.—For other cases, see Judicial Sales, Dec. Dig. § 52.\* 13 Va.-W. Va. Enc. Dig. 516, et seq.; 14 id. 1053, et seq.]

**2. Judicial Sales (§ 52\*)—Validity—Effect of Confirmation.**—An increase or abatement of the price of land sold at judicial sale will not be permitted for excess or deficiency in quantity after confirmation of the sale, except for after-discovered fraud, misrepresentation, or mutual mistake.

[Ed. Note.—For other cases, see Judicial Sales, Dec. Dig. § 52.\* 8 Va.-W. Va. Enc. Dig. 752, et seq.; 826, 830, 831, 838; 13 id. 529, et seq.; 14 id. 1055.]

Appeal from Circuit Court, Rockingham County.

Petition of intervention by Blakemore's administrator and others in the cause of Cline against Blakemore. From a decree sustaining a demurrer to the petition, petitioners appeal. Affirmed.

*Roller & Martz* and *D. O. Dechert*, for appellants.

*John E. Roller*, for appellee.

## PERKINS v. HERRING.

March 10, 1910.

[67 S. E. 515.]

**1. Reformation of Instruments (§ 45\*)—Evidence—Weight and Sufficiency.**—To warrant a reformation of a contract on the ground of mistake of fact, the evidence must be clear, convincing, and satisfactory.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. § 158; Dec. Dig. § 45.\* 9 Va.-W. Va. Enc. Dig. 869, et seq.; 11 id. 903, 905; 14 id. 901.]

**2. Reformation of Instruments (§ 45\*)—Evidence—Sufficiency.**—In an action for specific performance of a contract to convey land, evidence held insufficient to sustain defendant's claim for a reformation

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\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

of the contract on the ground of mistake as to the boundaries of the land.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. § 159; Dec. Dig. § 45.\* 9 Va.-W. Va. Enc. Dig. 875.]

Appeal from Circuit Court, Louisa County.

Action by Otis Perkins against G. E. Herring. From a judgment for defendant, plaintiff appeals. Reversed, and judgment rendered for plaintiff.

*Jas. Lee Shelton and Wm. E. Bibb*, for appellant.  
*F. W. Simans*, for appellee.

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MILLER et al. v. PENNIMAN & BRO. et al.

March 10, 1910.

[67 S. E. 516.]

**1. Attorney and Client (§ 80\*)—Liability of Client for Acts of Attorney—Check Payable to Attorney—Indorsement—Effect.**—Real estate was sold for the benefit of creditors, and the sale commissioner made his check for the proceeds payable to S., the attorney for certain first-class judgment creditors, and to M. and D., attorneys for certain second-class judgment creditors. Whether the proceeds of the check were to be distributed pro rata among all the creditors, or only to those of the first class, was to be decided by two other attorneys, who found that they should be paid to S., the attorney for the first-class creditors. The check had been indorsed by the payees and left with M. to be deposited to their joint credit, but was deposited by him to his own credit, and the proceeds appropriated to his own use. S. was only able to collect part of the money, and contended that this amount only should be credited to his clients. Held, that the whole amount of the check must be credited upon the claims of the first-class creditors. The check having been made payable to all of the attorneys, no part of the check could have been collected by M. without the indorsement of S., and by his indorsement he made M. his agent to deposit the money, and M. in depositing the money to his own credit was not acting for his clients. Hence the second-class creditors could not be made to pay for the misplaced confidence of S. in M.

[Ed. Note.—For other cases, see Attorney and Client, Cent. Dig. § 143; Dec. Dig. § 80.\* 2 Va.-W. Va. Enc. Dig. 161, et seq.; 14 id. 136.]

**2. Attorney and Client (§ 156\*)—Abandonment of Attorney—Fees—Compelling Payment—Reference.**—M., after representing certain of the second-class creditors, was abandoned by them and other new

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\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.